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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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:
UNITED STATES OF AMERICA :
:
versus : Criminal Action Numbers
:
ARTURO VASQUEZ, : 2017 CF2 1369
PHILLIP GLASER, : 2017 CF2 1368
CHRISTIAN VALENCIA, : 2017 CF2 1203
MOLLY CARTER, : 2017 CF2 1380
DANIEL MELTZER, : 2017 CF2 1176
CALY RETHERFORD, : 2017 CF2 1378
CHRISTOPHER LITCHFIELD, : 2017 CF2 1235
CAROLINE UNGER, : 2017 CF2 1355
MATTHEW HESSLER, : 2017 CF2 7212
DYLAN PETROLHILOS, : 2017 CF2 7216
:
Defendants. :
-----x

Washington, D.C.
Thursday, May 31st, 2018

The above-entitled action came on for motions
before the Honorable ROBERT MORIN, Associate Judge, in
Courtroom Number 302.

THIS TRANSCRIPT REPRESENTS THE PRODUCT
OF AN OFFICIAL REPORTER, ENGAGED BY THE
COURT, WHO HAS PERSONALLY CERTIFIED THAT
IT REPRESENTS TESTIMONY AND PROCEEDINGS OF
THE CASE AS RECORDED.

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APPEARANCES:

On behalf of the Government:

BRITTANY KEIL, Esquire
AHMED BASET, Esquire
Assistant United States Attorney

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P R O C E E D I N G S

THE DEPUTY CLERK: United States versus Arturo Vasquez, 2017 CF2 1369; United States versus Phillip Glaser, 2017 CF2 1368; United States versus Christian Valencia, 2017 CF2 1203; United States versus Molly Carter, 2017 CF2 1380; United States versus Daniel Meltzer, 2017 CF2 1176; United States versus Clay Retherford, 2017 CF2 1378; United States versus Christopher Litchfield, 2017 CF2 1235; United States versus Caroline Unger, 2017 CF2 1355; United States versus Matthew Hessler, 2017 CF2 7212; United States versus Dylan Petrolhilos, 2017 CF2 7216.

MR. BASET: Good morning, Your Honor. For the United States, Ahmed Baset.

MS. KEIL: Good morning, Your Honor. Brittany Keil for the United States.

MR. LINEHAN: Good morning, Your Honor. Patrick Linehan for Mr. Vasquez. Mr. Vasquez is present.

MR. FRAGALE: David Fragale also for Mr. Vasquez.

MR. COFFIELD: Good morning, Your Honor. Bill Coffield for Molly Carter. Ms. Carter is present and ready to proceed.

MS. LEGRAND: Good morning, Your Honor. Rebecca Legrand for Christian Valencia, who is present as

1 well.

2 MR. BRUCKHEIM: Good morning, Your Honor.

3 Michael Bruckheim and Jonathan Fellner are here present on
4 behalf of Mr. Glaser, who is presently seated in the front
5 row.

6 THE COURT: Good morning.

7 MR. MURDTER: Good morning, Your Honor.

8 Charles Murdter on behalf of Caroline Unger, who is
9 present.

10 MR. SWEET: Mark Sweet and Michelle Bradshaw on
11 behalf of Mr. Litchfield, who is present.

12 MR. CLENNON: Cary Clennon for Matthew Hessler,
13 who is present.

14 MR. CLARKE: Andrew Clarke, counsel for
15 Dylan Petrolhilos, who is present.

16 MR. GOLDSTONE: Good morning, Your Honor.
17 Mark Goldstone, appearing for Daniel Meltzer, who's seated
18 in the back row.

19 MS. WEATHERS: Good morning, Your Honor.
20 Sharon Weathers for Clay Retherford, who's presently
21 seated.

22 THE COURT: Okay. Everybody can be seated.
23 I'll hear from the Government.

24 MR. BASET: Thank you.

25 I'll take some of the wind out of the sails here

1 by announcing, the Government does intend to dismiss
2 several cases without prejudice today, and it impacts both
3 trial groups.

4 THE COURT: Okay. Could you announce the
5 motion -- the cases which you're seeking to dismiss?

6 MR. BASET: Yes.

7 That would include the entirety of the June 4th
8 trial group to include: United States versus
9 Daniel Meltzer in 2017 CF2 1176; United States versus
10 Clay Retherford, 2017 CF2 1378; United States versus
11 Christopher Litchfield, 2017 CF2 1235; United States
12 versus Caroline Unger, which is 2017 CF2 1355; United
13 States versus Matthew Hessler, 2017 CF2 7212; as well as
14 Dylan Petrolhilos, U.S. v Dylan Petrolhilos, 2017 CF2
15 7216.

16 THE COURT: Okay. Mr. Hessler, Mr. Litchfield,
17 Mr. Meltzer, Mr. Petrolhilos, Mr. Retherford and
18 Ms. Unger, your case has been dismissed. You're free to
19 go.

20 MR. CLARKE: Your Honor, before that --

21 THE REPORTER: What's your name, please? I'm
22 sorry.

23 MR. CLARKE: I'm sorry. This is Andrew Clarke,
24 counsel for Mr. Petrolhilos.

25 I'm going to object to with it being without

1 prejudice, just because we haven't discussed the *Brady*
2 violations.

3 I think if Your Honor makes a decision on the
4 evidence and the evidence is out, the Government is not
5 going to be able to bring the case back.

6 MR. GOLDSTONE: Your Honor, Mark Goldstone for
7 Daniel Meltzer.

8 I would join Mr. Clarke's motion that it be with
9 prejudice. Your Honor has already decided the
10 constitutional violation. The only issue we're here for
11 today was to decide the sanction.

12 On the basis of a constitutional due process
13 violation, we ask that this case be dismissed with
14 prejudice.

15 THE COURT: All other defendants join in that?

16 SIMULTANEOUS SPEAKERS: Yes, Your Honor.

17 THE COURT: Do you have to make a call to your
18 office? Because I will move forward on --

19 MR. BASET: That's fine. We are prepared to
20 proceed. There are other charges in cases as well.

21 THE COURT: Okay. So why don't you go through
22 that.

23 MR. BASET: Sure.

24 MS. KEIL: And additionally in the May 29th
25 group, the Government will be dismissing the United States

1 versus Molly Carter, 2017 CF2 1380.

2 The remaining defendants in that group, the
3 United States versus Phillip Glaser, the United States
4 versus Christian Valencia, and the United States versus
5 Arturo Vasquez, the Government will only be proceeding on
6 Counts 2, 3, 4 and 5. Those are all misdemeanor counts.

7 THE COURT: So they're still a jury trial?

8 MS. KEIL: It's a bench trial, Your Honor.

9 THE COURT: There are four misdemeanors. It's
10 got to be five now?

11 (Court and clerk confer.)

12 THE COURT: Is it five now? I thought it was
13 four.

14 MS. KEIL: My understanding is four is still a
15 bench trial, Your Honor.

16 THE COURT: Okay. Could you announce the --
17 could you announce the charges upon which you're
18 proceeding?

19 MS. KEIL: Yes, Your Honor.

20 Count 2 is rioting, which is misdemeanor
21 rioting.

22 Count 3, conspiracy to riot.

23 Count 4 is a destruction of property charge, as
24 a misdemeanor.

25 And Count 5 is also destruction of property, as

1 a misdemeanor.

2 MR. BASET: And, Your Honor, if I could make two
3 points as far as --

4 THE COURT: I'm sorry.

5 Can I just get -- destruction of property. What
6 was that other one?

7 MS. KEIL: The final two are both destruction of
8 property.

9 THE COURT: Both destruction of property.

10 Yes.

11 MR. BASET: Just for the record, as a basis of
12 our decision today, it was informed at two levels. The
13 first is: Judge Knowles' ruling yesterday on the motion
14 to dismiss on the -- Count 1, which was the felony rioting
15 Count.

16 Her --

17 THE COURT: You mean the -- not the rioting
18 count.

19 MS. KEIL: It's -- yeah. It's the urging or
20 inciting.

21 THE COURT: Inciting count.

22 MR. BASET: It's inciting a riot.

23 And, in her decision, she laid out a standard
24 for what the intent would be to maintain that sort of a
25 charge moving forward.

1 That's a more specific standard that we've
2 received from the Government that we didn't quite receive
3 in the first case. And so that's -- knowing that, that's
4 informed our decision moving forward as far as how we can
5 prosecute future cases.

6 The second is that the Government's focus in
7 this case has always been about the conduct and the
8 participation in a black block between the hours of 10 and
9 11 in the morning on January 20th, 2017 in Washington,
10 D.C.

11 And to that end, the Government intended and has
12 used a single video from a planning meeting that took
13 place in Washington, D.C. on June 8th -- or rather
14 January 8th of 2017.

15 Now, that video, of course, was recorded
16 surreptitiously by a group called Project Veritas, and we
17 understand that that was controversial.

18 That being said, we didn't have any reason to
19 doubt the reliability, the authenticity, the accuracy of
20 what was depicted on that video, which we believed was
21 evidence, and still believe, to this day, is evidence of
22 the planning of this event.

23 In looking at the video, we had no reason to
24 deny or doubt the reliability. And that video was
25 actually determined to be admissible evidence, reliably

1 admissible evidence, at least for purposes of trial.

2 But that being said, as we've been able to
3 observe in the ongoing trial, the issue of Veritas has
4 resulted in, what we believe to be a distraction from the
5 conduct of the defendants.

6 Now, it's understandable why, as a trial tactic,
7 that's happening. But what it's done, in effect, is we
8 are now not focused as much on the conduct of the
9 defendants; it's now become more of a focus and an inquiry
10 on what the motivations and tactics were of this
11 particular group. Which, from the Government's point of
12 view, does not undercut the evidence that we had in this
13 case.

14 But that being said, the Government's decision
15 is based on an attempt to refocus the ongoing trials and
16 the trials moving forward on specifically the conduct of
17 the defendants.

18 And so from this point, we're not intending to
19 use any sort of video, any sort of statements elicited
20 from any videos used by Project Veritas.

21 THE COURT: In the non-jury matters?

22 MR. BASET: Correct.

23 THE COURT: Okay. So I appreciate you coming in
24 and announcing, because it clarifies what the Court has to
25 do. But there is an objection to the motion to dismiss

1 without prejudice, so I will be hearing and deciding on
2 sanctions with regard to the *Brady* violation.

3 Do you want to just take a pass to consult with
4 your office about whether or not you wish to --

5 MR. BASET: We're prepared to proceed.

6 I would, if I may have just about ten minutes
7 just to consult --

8 THE COURT: Yes.

9 MR. BASET: -- and make one final consultation?

10 THE COURT: No. No. That's fine.

11 MR. BASET: But we're prepared to proceed today
12 with the arguments about *Brady* and why they should be
13 dismissed without prejudice.

14 THE COURT: Okay. So how do you wish to proceed
15 with regard to the defense?

16 MR. CLARKE: After the ten minutes we can
17 proceed on the *Brady* violations. I think that will clear
18 up some things for everyone.

19 THE COURT: Okay. Thank you.

20 Ten minutes.

21 MR. BASET: Thank you.

22 THE COURT: Well, can I ask the Government why
23 you're seeking dismissal without prejudice?

24 MR. BASET: Well, we believe because the issue
25 that's been raised, at least the issue of *Brady*, has

1 emanated from the Government's use or obtaining videos
2 from Veritas. We believe that moving forward, if we're
3 not using these videos, that, as far as the trials moving
4 forward, they're not affected to the extent the defense
5 argues --

6 THE COURT: No. I'm not talking about the
7 trials moving forward. I'm talking about --

8 MR. BASET: So as far as these trials are
9 concerned, the sanction that they've always sought was
10 dismissal. They've received that sanction. We've made
11 the --

12 THE COURT: Okay. I just want to refocus you.
13 I'm asking you why you're seeking dismissal
14 without prejudice.

15 Do you have an intent to refile charges?

16 MR. BASET: At this stage, I can't speak to
17 that. I know that that's not part of the discussion right
18 now.

19 THE COURT: Okay. Could you discuss that, and
20 if you're not intending to go forward at a later time,
21 could you reconsider the nature of your motion to
22 suppress?

23 MR. BASET: Understood.

24 THE COURT: Do you see what I'm saying?

25 MR. BASET: Yes.

1 THE COURT: In other words --

2 MR. BASET: And to be frank, I don't know if

3 that's a determination that's been made or can be made at

4 this point, but I'll certainly inquire.

5 THE COURT: But the point is, if your motion to

6 dismiss is to dismiss the case and not go forward --

7 MR. BASET: Sure.

8 THE COURT: -- then we're going to go through,

9 with many different counsel, the issues that I have to

10 decide.

11 MR. BASET: Understood.

12 THE COURT: We may still have to go through it

13 with other counsel on the people you're proceeding with,

14 but it will be three defense counsel as opposed to ten.

15 MR. BASET: Understood. Thank you.

16 THE COURT: Thank you. Ten minutes, please.

17 (A brief recess was taken.)

18 THE COURT: We're back in session in the

19 matters.

20 I'll hear from the Government.

21 MR. BASET: I did have an opportunity to

22 inquire. And it's the Government's position that we would

23 ask for this to be dismissed without prejudice.

24 While we don't necessarily intend to re-bring

25 these cases, if there was somebody who, for example, came

1 in and gave us evidence, additional evidence, it would
2 behoove us not to be able to at least consider the
3 evidence.

4 THE COURT: Okay.

5 MR. BASET: So we do think that this could be
6 then decided if the Government did re-bring it at that
7 juncture. Because, at this point where the cases are
8 dismissed, it doesn't --

9 THE COURT: Well, they're not dismissed.
10 There's a motion to dismiss.

11 MR. BASET: I understand.

12 THE COURT: So the motion to dismiss hasn't been
13 granted, and they're objecting to it, so I'll have to
14 hear --

15 MR. BASET: We're fully prepared to litigate any
16 further issues.

17 THE COURT: Okay. Thank you.

18 Who wants to argue?

19 MR. CLARKE: Andrew Clarke, counsel for
20 Dylan Petrolhilos.

21 I assume we're operating under the assumption
22 that the case is going to be dismissed?

23 THE COURT: I think we're only operating -- I
24 mean, unless -- the only argument I'm going to be
25 entertaining is whether the cases should be dismissed

1 without prejudice for the violation, correct?

2 MR. BASET: Yes.

3 THE COURT: Is that the Government's view?

4 MR. BASET: Yes.

5 THE COURT: Thank you.

6 MR. CLARKE: Another clarification.

7 So the Government -- is the Government conceding
8 that there was another *Brady* violation or ...

9 THE COURT: I don't know what the Government's
10 conceding.

11 MR. BASET: The Government's not conceding a
12 *Brady* violation.

13 THE COURT: Okay. Thank you.

14 MR. CLARKE: Thank you. Okay.

15 So the Government has, again, violated its *Brady*
16 obligations on the May 30th email. The Government used
17 four factors -- or sent to the Court four different
18 factors in which --

19 MR. BASET: If I could just inquire with the
20 Court. I apologize for interrupting.

21 There was the -- in the Government's point of
22 mind, there are two distinct *Brady* issues. One was -- one
23 that was raised with respect to the clipping of the
24 planning meeting video.

25 THE COURT: Correct.

1 MR. BASET: And that's something that the
2 Government has responded to on the papers just last night.

3 And then there's the other *Brady* issue that was
4 raised by counsel, at least in a filing last night, with
5 respect to additional Veritas videos.

6 So, in my mind, at least from the Government's
7 point of view, these are two distinct issues. And in
8 terms of the analysis, I think it really delves or is
9 centered on that first *Brady* issue.

10 THE COURT: Right. And, in the Court's view, is
11 they're not distinct.

12 MR. BASET: Okay.

13 THE COURT: Thank you.

14 MR. CLARKE: I agree with the Court's view.
15 It's cumulative, and it all goes to why this case should
16 be dismissed with prejudice.

17 On the May 30th email to the Court, the
18 Government laid out four different factors in which they
19 used to determine whether or not to disclose evidence to
20 the defense.

21 Court's indulgence while I pull up those
22 factors.

23 The first factor was: Did the recording contain
24 information about the ACB? Which is the anti-capitalist
25 block.

1 The second was: Did the recording contain
2 statements by or conduct of defendants in this case?

3 The third was: Was there anything on the record
4 that could constitute evidence of a defendant's knowledge,
5 intent, purpose for the charged conduct? And did the
6 recording contain *Brady* information for the charged
7 conduct?

8 And in that email, they also admitted to not
9 disclosing 69 recordings from Project Veritas. 66 videos,
10 and three audio clips.

11 My motion focuses on 35 of those videos that
12 were from an action camp taken by Project Veritas to which
13 a Government -- an undercover Government agent was
14 present, Officer Adelmeyer.

15 The Government planned to introduce evidence
16 that violence was discussed at that action camp, but,
17 again, in its email, they discuss that the group was --
18 that the recordings from January 14th and 15th appear
19 to -- they appear to have a workshop teaching -- how to
20 de-escalate conflict when you observe someone being
21 targeted or harassed based on their race or religion.

22 That's in direct conflict with what the
23 Government -- the Government's witness is going to be
24 testifying about.

25 When asked, on April 6th during a trial

1 readiness hearing, about the videos from this action camp,
2 the Government denied any of those videos existed. We now
3 know that this is wholly untrue. I think that's a clear
4 *Brady* violation.

5 The reason why the case should be dismissed with
6 prejudice is because now we have cumulative actions.

7 If we start from the beginning and we start from
8 the fact that, again, we would not have had any of this
9 evidence had our trial group not filed a motion to compel
10 the raw video from the planning meeting, to which we
11 discovered that there were three additional minutes at the
12 end of the video, to which the Government never alerted us
13 to, which has evidence that exonerates our clients. And
14 the operative says "I don't think that they know
15 anything."

16 That led, again, to three additional videos from
17 Project Veritas being disclosed by the Government totaling
18 a little bit over 50 minutes.

19 That then led to a meeting with another trial
20 group with the Project Veritas operative where he stated
21 that he "didn't think anyone was planning violence,
22 especially" -- and he also stated that he didn't think
23 that Dylan Petrolhilos, the person who was in front of the
24 group, was planning any violence. And he also disclosed
25 that he took other videos, and other Project Veritas

1 operatives took other videos before January 20th.

2 This then led to the May 30th email, which
3 counsel -- which chambers received, in which they
4 disclosed that there's now 69 more recordings from Project
5 Veritas that the Government seemingly has had since
6 January of 2017, or around January of 2017, and to which
7 now on June -- or sorry, May 31st of 2018 or May 30th of
8 2018, we are now being disclosed.

9 Again, Your Honor, I think that it's very clear
10 that there's a *Brady* violation here. The Government's
11 witness is going to testify that the group planned to be
12 confrontational but non-violent. That's his observation
13 from that action camp.

14 The Government's attorney was asked whether or
15 not videos existed from that action camp. The
16 Government's attorney said there were not any videos.

17 Now, on May 30th, they're saying that there are
18 videos. I just don't know what the Government's
19 opposition to that could possibly be.

20 Now, for the prejudice argument, it's now too
21 late for us to go back and investigate any of those
22 circumstances. These circumstances happened back in
23 January of 2017. During our meeting with the Project
24 Veritas -- during the meeting with the Project Veritas
25 operative, they stated that they didn't know anything.

1 Seemingly so because this was over a year and -- a year
2 and five months ago.

3 They also stated -- the Government's witness,
4 Officer Adelmeyer, also stated that he doesn't remember
5 some things. The Government's detective says that he
6 doesn't remember some things. That's because of the
7 length of time that's passed.

8 Had we known about all of this evidence from the
9 beginning, all of the defense counsel would have been able
10 to at least investigate some of those circumstances
11 earlier.

12 And again, I rest on *Vaughan*, because this case
13 is actually worse than *Vaughan*, because in *Vaughan* --

14 THE COURT: I know. I was the trial judge on
15 *Vaughan*.

16 MR. CLARKE: Okay.

17 THE COURT: I'm pretty familiar with that case.

18 MR. CLARKE: I just want to make it clear the
19 reasons why this case is worse than *Vaughan*.

20 It's worse than *Vaughan* because of the fact that
21 there's 69 different recordings that were not disclosed.

22 We had to file a motion to even get those
23 disclosures from the Government, and we're asking that the
24 case be dismissed with prejudice. I think that's the only
25 remedy at this point for the defendants in the June 4th

1 trial group.

2 THE COURT: Thank you.

3 MR. SWEET: Your Honor, Mark Sweet on behalf of
4 Mr. Litchfield.

5 I agree with everything that Mr. Clarke has
6 said. I just wanted to add one additional point. It was
7 also in the motion last night.

8 The Court had previously found a violation of
9 *Brady* and Rule 16, but we believe there's actually a third
10 violation now, and that is a violation of the Court's
11 order to compel the Government to produce the entirety of
12 whatever is in the Government's possession to the defense.
13 This was in the April 6th hearing that we had in response
14 to our motion to compel.

15 At the time, we went back and forth, several
16 times, with the Government about what existed. The Court
17 accepted the representations from the Government as to
18 what video evidence it had from Project Veritas. And I
19 think if there was any confusion about the scope of the
20 Court's order -- and I don't think there should be,
21 because I think it's clear on the face.

22 But if there's any confusion at all at that time
23 by the Government as to whether it applied to just the
24 January 8th meeting or the entirety of all the Project
25 Veritas videos that it had, it was incumbent upon the

1 Government to disclose, at that time, that it had many
2 other videos from Project Veritas; that it had determined
3 these videos to be not relevant; and it was choosing not
4 to produce those; and that those would be beyond the
5 Court's order.

6 And they never spoke up; they never said
7 anything to the Court; they never said anything to the
8 defense; and I think it not only violated the Court's
9 order, but it missed many opportunities to clarify the
10 record for everybody. And so it's because of that that
11 we're in this situation right on the eve of trial.

12 THE COURT: Thank you.

13 Before you can make ~~any~~ can you give
14 clarification? Have you had further discussions with the
15 FBI?

16 MS. KEIL: I have, Your Honor.

17 THE COURT: Okay. Could you make
18 representations about that?

19 MS. KEIL: Yes, Your Honor.

20 So when I spoke with them yesterday, the
21 questions -- I'll start with the questions the Court asked
22 me yesterday. Which was: First, when did the U.S.
23 Attorney's Office know that there had been an interaction
24 between the FBI and Project Veritas. *

25 The Government did know that in February of

1 2017. They knew that as it related to the deplorable^s
2 action that was also being undertaken. There was actually^y
3 a criminal case about that, a separate case. And the ^e
4 Government did receive, at that time, the 302, which the^f
5 Government provided yesterday.

6 That was provided in response to what -- the FBI
7 information, what videos they may have had about the day
8 of the event of January 20th. Then the Project Veritas
9 video, the Government realized there was a video of a
10 planning meeting and reached out to Project Veritas to get
11 that information.

12 The first time defense counsel, I believe, was
13 actually notified of who made that video was in November
14 during a pretrial hearing for the November defendants.
15 **There was no agreement by the Government to hide any -- of**
16 **the fact that Project Veritas and the FBI had met.'**

17 I spoke with the agent who met with the Project
18 Veritas personnel. They were contacted, initially, by the
19 attorney for Project Veritas through their public line.
20 Basically, as the FBI understood it -- and I don't want to
21 speak for them, but it's my understanding of what they
22 told me is that they received this information, that
23 Project Veritas had been doing their own investigation
24 into leftist organizations, from their perspective, and,
25 at some point, they came across material that they

1 determined somebody might be getting hurt and they needed
2 to tell the FBI this.

3 So they reached through their public line, they
4 met with an agent. They had sent them two clips, one was
5 one minute, one was two minutes. They both related to
6 chaining Metro trains together during the inauguration to
7 cause a disturbance.

8 THE COURT: Can I ask you -- and I don't mean to
9 interrupt.

10 If you can -- the memo indicates -- 302⁴
11 indicates there was a meeting on January 13th.⁴

12 MS. KEIL: Yes⁴

13 THE COURT: The memo indicates it's posted on
14 January 27th. And it appears a lot of the discussion
15 about meetings that occurred between the 13th and the 20th
16 are in the past tense, as if they're reporting on events
17 that had occurred.

18 Do you --

19 MS. KEIL: They informed me ~~they~~ only met with⁴
20 them one time, and so my understanding was that was on the⁴
21 13th, but that does read --⁴

22 THE COURT: Was there any oral update or ...

23 MS. KEIL: I asked them after that one meeting
24 that they had -- they didn't bring any videos to the
25 meeting. They didn't bring anything to the meeting. The

1 only videos they ever received, like I said, was that one
2 two-minute video. They didn't even receive the planning
3 videos or any of the things that the U.S. Attorney's
4 Office had.

5 That they -- that after that, they never asked
6 them, please keep us updated, let us know if you find
7 anything. And, in fact, they never had any more
8 interaction with them. And that was the extent. And that
9 they did meet with those individuals, that there were
10 three individuals from Project Veritas who reported on the
11 meetings that they had attended on January 8th.

12 THE COURT: So when there's a discussion in the
13 302 about future -- is that a discussion about future
14 events or past events? That's what's unclear to me.

15 MS. KEIL: Right. It appears -- it does appear
16 that they met with them on the 13th. But it says that
17 there's -- it says that they're going to be hosting these
18 things, like, on the 14th and the 16th.

19 THE COURT: Did you look at the tense of the
20 verbs and the later descriptions of those events?

21 MS. KEIL: Right. I see that.

22 I mean, I personally spoke with the agent who
23 wrote this yesterday.

24 THE COURT: Okay.

25 MS. KEIL: So he told me he's met with them one

1 time.

2 THE COURT: Okay.

3 MS. KEIL: So I don't know why it is written
4 this way, but I -- the person who signed this is the
5 person who made those representations to me.

6 THE COURT: Thank you.

7 MS. KEIL: And so that was what their -- the
8 FBI's perspective was that this was a concerned citizen
9 group, heard about upcoming criminal activity, so they
10 spoke with them, and that was the information they
11 received.

12 Those two clips relating to the train-chaining
13 situation were not disclosed to us, from the FBI to us.

14 We did -- and I believe that's discussed
15 somewhere in the memo, that we did have an audio clip that
16 also discussed the train, which is actually the same one
17 that the FBI had had.

18 So that was their -- there was no intention to
19 not disclose anything purposefully to defense from the
20 Government. And that was the knowledge of the FBI's --
21 the FBI's scope of their knowledge of what Project Veritas
22 was doing, is that it was their understanding that they
23 were a right organization trying to infiltrate a left
24 organization for their own purposes and came across what
25 they believed might be actions that would cause harm to

1 people, and that's why they sent --

2 THE COURT: Thank you.

3 MR. BASET: With respect to why these cases
4 should not be dismissed with prejudice, I think that that
5 would be the ultimate sanction, one that even is not
6 supported by the facts.

7 I think, for one, at the onset of this case,
8 it's my understanding that what the Government was
9 receiving was server information, Facebook information and
10 other types of private information from citizens.

11 The concern that the Court had expressed was the
12 privacy of these individuals, and that the Government
13 should engage in a Rule 16 analysis, an inquiry into the
14 scope of all this evidence to whittle it down to what is
15 relevant.

16 And the Government has tried, to the best of its
17 ability, to --

18 THE COURT: That's with regard to the cell phone
19 communications?

20 MR. BASET: Well, that's the prism through
21 which -- and it was specific when it came up with regard
22 to cell phone communications, and I believe DreamHost, and
23 our subpoena, in that regard, that because there was so
24 much information, a lot of it was private, and we needed
25 to focus. Because the --

1 THE COURT: No. The DreamHost has nothing to do
2 with that.

3 MR. BASET: Well, that was --

4 THE COURT: That was the Government attempting
5 to seek information of other individuals. We're talking
6 about your *Brady* obligation.

7 MR. BASET: Understood. But that required an
8 analysis under Rule 16 of what was relevant.

9 And as far as what was relevant, the videos that
10 have been discussed that Veritas has taken, just to
11 provide some context, they infiltrated a lot of
12 conversations, a lot of meetings, from meetings in
13 New York to Chicago to D.C. And all of these meetings had
14 only one thing in common, that they seemed to be planning
15 of various legal protests in response to -- or in
16 preparation of the inauguration.

17 Now, the Government's focus on this case has not
18 been every single protest that's planned for the
19 inauguration, but rather specifically, the black block
20 that moved between 10 and 11 a.m. on Logan Circle, and
21 those individuals involved in that black-block activity.

22 But, conversations that people are having about,
23 for example, de-escalation tactics, if you were to witness
24 a hate crime, which, I believe, is something that's
25 captured on these videos. That's an example. Or people

1 explaining their own political views or their political
2 philosophy about what's happening in the world.

3 These are conversations that -- a lot of them
4 were private conversations that the person who created
5 this video was having with individuals that had nothing to
6 do with the conduct at issue.

7 And so, that was the prism through which we
8 evaluated all the evidence that we received. Because the
9 investigation that was done by agencies, whether it was
10 Secret Service, whether it was our own office, whether it
11 was MPD, there were a lot of investigations, and there was
12 a lot of protests that were planned that day.

13 So, we received a lot of evidence that had
14 nothing to do with the anti-capitalist black-block march,
15 but rather, other events that were planned.

16 Now, counsel talked specifically about action
17 camp. And I want to be clear about a couple things.

18 The first is that they represented, or their
19 assertion, is that we were provided a video of an action
20 camp meeting that Officer Adelmeyer attended. That's not
21 true. We were never provided any sort of video by Veritas
22 of any meeting -- an action camp meeting, that is -- that
23 Adelmeyer attended.

24 To be clear, though, when those action camps
25 were planned at American University, that was a week-long

1 event with numerous types of sessions and meetings and
2 plannings.

3 And so Adelmeyer, as our understanding, went to
4 some of that. It seems to be, from the Government's point
5 of view, that Veritas went to some of those meetings. But
6 we don't have any reason to believe we have no -- to
7 believe that Adelmeyer's attendance at that action camp
8 was ever recorded by anyone, let alone from Veritas.

9 The second assumption or assertion that's made
10 is that we've used evidence from action camps. That's not
11 accurate. While Officer Adelmeyer has testified that he
12 attended an action camp, there's nothing of substance that
13 he testified to that went to the conduct at issue. Just
14 the fact that he attended. So that would be the first
15 thing.

16 The additional aspect of this is that, at the
17 end of the day, the Government's concern was also twofold.
18 One was relevance; but two was also the privacy of the
19 number of citizens that Project Veritas had captured on
20 video talking about their own politics, talking about
21 things that have absolute no relevance to this case.

22 And, in fact, Your Honor had requested that we
23 provided a summary of the videos that were not released.
24 And we provided those summaries. And within those
25 summaries, at least from what we gather, there's no

1 relevance.

2 And so while the defense can claim that they're
3 entitled to these videos, it would be akin to requiring
4 the Government then to turn over, for example, all body
5 cam from every type of arrest that was made in a two-block
6 square mile, even though those other arrests had nothing
7 to do with the crime at hand.

8 And I think that was, at least the Government's
9 way of looking at it. Especially in light of some of --
10 or at least the prior rulings granted. And I readily
11 agree with you that that was with respect to different
12 matters with respect to DreamHost or Facebook and our sort
13 of processing of that evidence.

14 But it's through that same lens that we also
15 looked at this evidence, too. And there was no reason for
16 us to believe that that lens should have been different.
17 It's the same lens that we apply to all other types of
18 criminal prosecutions.

19 So to be sure, there were a lot of things that
20 were captured by Veritas. We gave them what is relevant
21 in this case, and we still have not heard anything that
22 the defense is claiming that is *Brady* in the sense of
23 exculpatory information.

24 Granted, I understand that they would like to
25 investigate these things. And just like they wanted to

1 investigate the clipping of the video that occurred that
2 was the basis of the first *Brady* argument. But as we've,
3 at least learned from our investigation of that case, that
4 statement had no relevance, at least in our case. And I
5 think that the same sort of analysis would apply here.

6 And I also think, too, because the Government
7 has dismissed the case --

8 THE COURT: No. It's moved to dismiss the case.

9 MR. BASET: Has moved to dismiss the case, that
10 that is the ultimate sanction here. The cases are not
11 proceeding against them.

12 And I think absent a showing of some real bad
13 faith on the part of the Government where we were
14 intentionally trying to hide relevant probative evidence
15 that would exculpate their clients, I think that
16 dismissing this case with prejudice would be far too
17 extreme of a sanction.

18 THE COURT: Could you explain your office's
19 representation to this Court that left a clear impression
20 that there was only one video received by Detective
21 Pemberton?

22 MR. BASET: Now --

23 THE COURT: That was made personally to this
24 Court.

25 MR. BASET: I understand.

1 To be sure, I was not there making the
2 representations. But what I can say is that it was our
3 understanding that that discussion was based off of that
4 specific planning meeting.

5 THE COURT: Because your office represented
6 there was only one video. That's what your office
7 represented.

8 MR. BASET: I can't speak to that at this
9 moment.

10 THE COURT: So you're not providing any argument
11 on behalf of your office as to why those representations
12 were made to the Court?

13 MR. BASET: And I had a brief opportunity to
14 review at least parts of the transcript that were attached
15 to the motion that was provided last night.

16 My quick reading of that is, at least -- and
17 again, I can't speak for Ms. Kerkhoff, who was standing in
18 on that day, but my understanding is that the inquiry was
19 focused on the planning meeting video. There were --

20 THE COURT: That's because your office
21 represented that was the only video turned over to
22 Detective Pemberton. That's why it was limited to that
23 video.

24 MR. BASET: I can't speak to that, Your Honor,
25 at this time.

1 If I could take a moment, if there's a specific
2 inquiry that's dispositive on this issue --

3 THE COURT: No. If you weren't prepared to
4 answer it now, I'm not going to give you time.

5 MR. BASET: I was not.

6 THE COURT: Anything else?

7 MR. BASET: Brief indulgence.

8 MS. KEIL: Your Honor, may I just add, again, we
9 were not here when -- whatever representation the Court is
10 talking about. I'm not sure exactly what that one was,
11 and I understand that the Court --

12 THE COURT: No. I have a very clear
13 recollection of that representation.

14 MS. KEIL: I know.

15 I will say that, in conversations, it has always
16 been, I believe, the understanding that it was limited to
17 January 8th. That is my understanding is that was why
18 that comment, perhaps, had been made.

19 THE COURT: Again, this becomes circular.
20 That's because your office represented that.

21 MR. BASET: And if I could add just one thing.

22 The Government did disclose Veritas videos that
23 were not from January 8th.

24 THE COURT: I agree with that.

25 MR. BASET: So we -- we didn't represent that

1 this was the only video that we had. There were other
2 Veritas videos.

3 THE COURT: Okay. Anything else?

4 MR. BASET: Nothing additional.

5 THE COURT: Anything?

6 MR. CLARKE: Your Honor, the Government has
7 provided us with co-counsel's statements. I just want to
8 give you -- co-conspirator statements. I'm going to be
9 brief. Thank you.

10 This is Andrew Clarke, counsel for
11 Dylan Petrolhilos.

12 In that chart -- and I can hand this up to the
13 Court -- the UC attended "action camp at American
14 University on January 14th, 2017." It can't be any more
15 clearer that that's what he attended.

16 That's all I have. And the Government is --
17 that's all I have, Your Honor.

18 THE COURT: Okay. Thank you.

19 Well, the Court did find previously a *Brady*
20 violation, but what the Court indicated, at that time, was
21 the defense had a right to that information so they could
22 conduct an appropriate investigation. And as with any
23 investigation, additional facts can be revealed. And
24 that's what happened with regard to the Court's ordering
25 of the disclosure and the finding of the *Brady* violation.

1 I don't know what the Government's
2 explanation -- and they have offered no explanation as to
3 why it did not appraise the Court of the existence of
4 these additional videos.

5 And the Court's memory and the reading of the
6 transcript is, the Government left the Court and the
7 parties with the distinct impression that there were no
8 additional videos other than what had been previously
9 disclosed. And we come to find out, there are additional
10 videos, in the Court's mind, that would be relevant to the
11 conduct of any investigation of a competent defense
12 counsel.

13 With regard to the alleged videos of the action
14 camps, the defendant could be present or not present, each
15 of which would be relevant to any defendant's defense of
16 conspiracy. And it's hard to put the defense in a
17 position to make them whole.

18 I do think it's a serious violation. It was
19 intentional in the sense that the Government made
20 intentional decisions that it made not to disclose.

21 I'm not prepared to find that it was necessarily
22 malevolent, but counsel before me is not able to make
23 representations, so I can't make a complete decision with
24 regard to that. But, to me, it was, at this point, not
25 explainable to the Court, the representations that were

1 made, particularly in light of *Vaughan* and the directions
2 of the Court of Appeals.

3 I agree with the Government's submission that
4 dismissal is a very severe sanction for the Government.
5 In balancing all the factors -- and this is with regard to
6 the remaining defendants as well -- I'm going to dismiss,
7 with prejudice, the conspiracy --

8 Excuse me. Please, don't react.

9 A DEFENDANT: I'm sorry.

10 THE COURT: Dismiss, with prejudice, the
11 conspiracy charge, and not allow the Government to proceed
12 on a *Pinkerton* theory.

13 That will be the extent of the Court's sanctions
14 with regard to the Government. They will not be able to
15 proceed on any conspiracy to riot or *Pinkerton* theory with
16 regard to liability on behalf of any defendant.

17 I'm going to deny the motion to dismiss, with
18 prejudice, the remaining counts. I do take into account
19 the Government's offer to dismiss without prejudice, and
20 the Court will grant the motion to dismiss without
21 prejudice.

22 Mr. Hessler, Mr. Litchfield, Mr. Meltzer,
23 Mr. Petrolhilos, Mr. Retherford and Ms. Unger, as well as
24 Ms. Carter, you're free to go.

25 MR. BASET: Your Honor, if I may ask a point of

1 inquiry.

2 THE COURT: Uh-huh.

3 MR. BASET: For clarification, I understand that
4 the Government is not allowed to proceed on the conspiracy
5 to riot?

6 THE COURT: Correct.

7 MR. BASET: The Government's evidence and theory
8 in that indictment is that the conspiracy to riot begins
9 at Logan Circle --

10 THE COURT: Right.

11 MR. BASET: -- once the movement occurs but does
12 not include any sort of --

13 THE COURT: But what I'm saying is: The
14 evidence concerning conspiracy and the conspiracy charge,
15 because the Government did not disclose these videos and
16 allow proper investigation, I'm sanctioning the Government
17 from proceeding on that count or on that theory.

18 You still have aiding and abetting. I'm not
19 precluding that. But the conspiracy count *and Pinkerton*
20 liability flowing from that, the Government is prohibited
21 from going forward on.

22 MR. BASET: Thank you.

23 THE COURT: Thank you.

24 SIMULTANEOUS SPEAKERS: Thank you, Your Honor.

25 THE COURT: So who is left? Or do you need time

1 now, or do you just want me to certify your trial to the
2 trial judge?

3 MS. KEIL: I -- oh, I don't know if other
4 counsel --

5 THE COURT: No, I'm asking the Government.

6 MS. KEIL: Yes, Your Honor. For the remaining
7 three defendants, I think we would be prepared to -- I
8 don't know when they would be prepared to start, but
9 Monday would be our preference, if the Court is willing to
10 give us that. Because Mr. Qureshi is still in trial.

11 THE COURT: Oh, I see. Okay.

12 So who's left? Ms. Weathers is left?

13 MS. WEATHERS: Yes, I'm here. No. No. No.
14 I'm not left, Your Honor. You've dismissed my client.

15 Sharon Weathers for Clay Retherford.

16 I just have one question I would like to pose to
17 the Court before my client leaves. And that is: Since
18 the case has been dismissed, partially with prejudice,
19 partially without prejudice, I hereby make a demand upon
20 the Government for the return of my client's personal
21 property.

22 THE COURT: Okay. You can discuss that with the
23 Government. I'm sure they're -- they will make whatever
24 appropriate decision. We don't have to do it here.

25 MS. WEATHERS: Thank you.

1 THE COURT: Who are the defendants left?
2 MR. LINEHAN: Mr. Vasquez.
3 MS. LEGRAND: Mr. Valencia.
4 MR. BRUCKHEIM: And Michael Bruckheim and
5 Jonathan Fellner on behalf of --
6 THE COURT: Okay. There's a request from the
7 Government to proceed on Monday.
8 MS. LEGRAND: Just because my client's here, how
9 long do you think we'll need?
10 MS. KEIL: I mean, since it's a bench trial, I'm
11 hoping --
12 THE COURT: Days, as opposed to weeks.
13 MS. KEIL: Yeah. Two days, perhaps, for the
14 Government's evidence, I think should be --
15 MS. LEGRAND: And just to be clear now, we would
16 be proceeding on Counts 1 --
17 MR. LINEHAN: 2, 4 and 5.
18 MS. LEGRAND: Not the conspiracy counts. So 2,
19 4 and 5?
20 MS. KEIL: Correct. Yes.
21 THE COURT: Okay.
22 MS. LEGRAND: And -- sorry. You proposed
23 Monday?
24 MS. KEIL: Yes. Today was going to be a voir
25 dire day --

1 THE COURT: Jury selection, yes.

2 MS. KEIL: -- so I feel, if that's okay with the
3 Court, that --

4 THE COURT: No. The parties shouldn't have been
5 prepared with witnesses today.

6 MS. KEIL: Right. So Monday we would be
7 prepared to start with witnesses and openings.

8 MS. LEGRAND: Do you think we could be done next
9 week?

10 MS. KEIL: I hope, depending on counsels'
11 questions, that we would be done within two to three days
12 with the Government's case.

13 MS. LEGRAND: I'm just asking -- I'd like to --
14 that probably makes sense.

15 Everybody else?

16 MR. FRAGALE: It makes sense.

17 MR. LINEHAN: We're fine.

18 MS. LEGRAND: Okay. My client has to travel and
19 stay in town.

20 THE COURT: And if this were a jury trial, we
21 wouldn't have been starting until Monday anyways with
22 witnesses, so I think that's a fair resolution.

23 Thank you.

24 MS. KEIL: Is there a courtroom we should report
25 to on Monday?

1 THE COURT: Judge Dayson.

2 MS. KEIL: Okay. Thank you, Your Honor.

3 MR. LINEHAN: Thank you, Your Honor.

4 MR. FRAGALE: Do they need to sign?

5 THE DEPUTY CLERK: Yes.

6 Mr. Glaser, Mr. Valencia and Mr. Vasquez, you
7 each will be signing notice to return to court on Monday,
8 which is June 4th, at -- in Courtroom 203 before
9 Judge Dayson. If you fail to appear at that date and
10 time, you'll subject yourself to an additional \$12,500
11 fine, five five years in jail or both.

12 Do you understand the warning?

13 DEFENDANT VALENCIA: Yes.

14 DEFENDANT VASQUEZ: Yes.

15 DEFENDANT GLASER: Yes.

16 (Court and clerk confer.)

17 THE COURT: Can I remind the Government with
18 regard to motions to return property. I think the process
19 we had before is notifying other defendants to make sure
20 that they are not requesting their property for evidence
21 in their trial.

22 MS. KEIL: Yes. I'm sure -- if that process has
23 been done before, I will speak with the --

24 THE COURT: I wanted to remind the Government
25 with regard to that.

1 MS. KEIL: Okay. Yes, Your Honor.

2 MS. LEGRAND: Can I make a request to save
3 resources?

4 If there's any chance you could call the exhibit
5 list now, that -- I know that might be a lot of work on
6 your end. If you can, that would be great, but I
7 understand --

8 MS. KEIL: Well, we can all talk --

9 MS. LEGRAND: Yeah, we'll talk.

10 MS. KEIL: -- about what we're doing on Monday.

11 MS. LEGRAND: Okay. Totally fine. Thank you
12 very much.

13 (Proceedings adjourned at 10:50 a.m.)
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CERTIFICATE OF REPORTER

I, Stephanie M. Austin, RPR, CRR, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the motions in the case of the UNITED STATES OF AMERICA versus ARTURO VASQUEZ, Criminal Action Number 2017 CF2 1369; UNITED STATES OF AMERICA versus PHILLIP GLASER, Criminal Action Number 2017 CF2 1368; UNITED STATES OF AMERICA versus CHRISTIAN VALENCIA, Criminal Action Number 2017 CF2 1203; and UNITED STATES OF AMERICA versus MOLLY CARTER, Criminal Action Number 2017 CF2 1380; UNITED STATES OF AMERICA versus DANIEL MELTZER, Criminal Action Number 2017 CF2 1176; UNITED STATES OF AMERICA versus CALY RETHERFORD, Criminal Action Number 2017 CF2 1378; UNITED STATES OF AMERICA versus CHRISTOPHER LITCHFIELD, Criminal Action Number 2017 CF2 1235; UNITED STATES OF AMERICA versus CAROLINE UNGER, Criminal Action Number 2017 CF2 1355; UNITED STATES OF AMERICA versus MATTHEW HESSLER, Criminal Action Number 2017 CF2 7212; and UNITED STATES OF AMERICA versus DYLAN PETROLHILOS, Criminal Action Number 2017 CF2 7216, in said court on the 31st day of May, 2018.

1 I further certify that the foregoing 44 pages
2 constitute the official transcript of said proceedings, as
3 taken from my machine shorthand notes, together with the
4 backup tape of said proceedings to the best of my ability.

5 In witness whereof, I have hereto subscribed my
6 name, this 31st day of May, 2018.

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8
9
10 _____
11 Stephanie M. Austin, RPR, CRR
12 Official Court Reporter
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